IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 26 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAMOD H PAREKH

Versus

STATE OF GUJARAT

Appearance:

MR JT TRIVEDI for Petitioner

MR ST MEHTA, Ld. APP for Opponent No.1

RULE SERVED BY DS for Opponent No. 2- absent

MR PN BAVISHI for Opponent No. 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 15/09/2000

ORAL JUDGEMENT

1. The revision-petitioner i.e. original complainant of Criminal Case No.2423 of 1987 pending on the file of the learned Chief Judicial Magistrate, Surendranagar (who will be referred to hereinafter as the

learned Magistrate) has by filing this Criminal Revision Application under Section 397 of the Criminal Procedure Code (In short `Cr.P.C.') challenged the legality, correctness and propriety of order refusing the request of complainant to declare witness Kishorchandra Narotamdas Rajdev (Exh.130) as hostile witness, during the course of recording evidence of said witness Kishorchandra Narotamdas Rajdev Ex.130 on 27.11.1992.

2. Here in this Criminal Revision Application, the revision-petitioner is the complainant whereas revision-opponents No.2 and 3 are the original accused No.1 and 2 in Criminal Case No.2423 of 1987. It may be noted that, in original complaint bearing Criminal Case No.2423/87, there were accused No.3 and 4. But as stated by Shri J.T.Trivedi, the learned advocate for revision-petitioner their names have been deleted by the order of the Court and, therefore, parties will be referred to as the complainant and accused respectively at appropriate places.

3. The facts leading to this Criminal Revision Application in a nutshell are as follows:

3.1 The original complainant has lodged his private complaint in the Court of learned Magistrate against four accused, as stated above, on 18.7.87. That complaint has been lodged for offences punishable under Section 120-B, 406, 409, 420, 468 and 471 of the Indian Penal Code. From record, it appears that, the complainant has examined certain witnesses in the case. The complainant produced Kishorchandra Narotamdas Rajdev as his witness before the Court, as his evidence was started to be recorded on 27.11.1992. This witness was examined to prove Panchnama Ex.131 which was drawn by this very witness in his capacity as Court Commissioner in one civil matter bearing Special Civil Suit No.96 of 1986 in presence of two panch witnesses. To prove that Panchnama Ex.131, the complainant started to examine that witness and during the cross examination-in-chief, that Panchnama Ex.131 was tendered in his evidence and it was exhibited without any demur or objection from side of accused. Thereafter, the learned Magistrate for accused started to cross-examine the witness and the witness gave certain answers in his cross-examination, which as per say of complainant, are destructive to the case of the prosecution and, therefore, the learned advocate for the complainant requested the learned Magistrate to declare said witness as "Hostile Witness". The learned Magistrate, after perusal of the record and hearing the learned advocates for both the parties on the point of

request made by Complainant's Advocate, refused to grant permission as prayed for by the complainant. As against that order of refusal which is incorporated in deposition of witness, the original complainant, has by preferring this Criminal Revision Application, challenged that order dated 27.11.1992.

4. When this Criminal Revision Application came up for final hearing before this Court, the learned advocates for both the parties including the learned APP for the State jointly, submitted that no reasoned order be passed while disposing of this application.

5. Having heard the learned advocates for both the parties and on going through the grounds stated in memo of this Criminal Revision Application, this Court finds that this application deserves to be allowed subject to certain directions to be given to the learned Magistrate.

6. In view of this, this Criminal Revision Application is allowed. The order dated 27.11.1992 refusing the prayer of complainant for declaring witness Kishorchandra Narotamdas Rajdev (Ex.130) as Hostile Witness in Criminal Case No.2423 of 1987 is set aside. The complainant is permitted under sec.154 of Indian Evidence Act, 1872, to put all types of questions to this witness Kishorchandra Narotamdas Rajdev (Exh.130) which might be put in cross-examination by the adverse party i.e. accused.

7. Looking to the fact that this Criminal Revision Application has been preferred challenging the order passed in Criminal Case No.2423 of 1987, it would be in the interest of justice and in the fitness of things, that the said case is required to be disposed of at the earliest and, therefore, the learned Magistrate is directed to dispose of this Criminal Case No.2423 of 1987 which is pending on file of his Court, at the earliest, preferably within six months from the date of receipt of writ of this Court, by giving top priority over other cases filed subsequent to this case.

7.1 Both the parties are directed to extend full co-operation to the learned Magistrate so as to enable him to dispose of the case within a given time. By this order, both the parties are directed to appear before the learned Magistrate on 16th October, 2000, positively, without fail.

7.2 The learned Magistrate is directed to issue a witness summons on Kishorchandra Narotamdas Rajdev who is

a Court-employee directing him to remain present before the Court on 16th October, 2000.

8. With the aforesaid directions, this Criminal Revision Application stands disposed of. Rule is made absolute to the aforesaid extent. Ad-interim relief granted by this Court on 10th February, 1993, is vacated forthwith. D.S. permitted.

(H.H. Mehta, J.)

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